IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 572 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNITED INDIA INSURANCE - Appellant(s)
Versus
DILSABBIBI DOSUMIYA MALEK & 4 - Defendant(s)

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Appearance :
MR AP MEDH for Appellant(s) : 1,
MR YV BRAHMBHATT for Defendant(s) : 1 - 2.
None for Defendant(s) : 3,
MR DF AMIN for Defendant(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged, the judgment and award of the Motor Accident Claims Tribunal (Special), Kheda at Nadiad passed in M.A.C.P. No.858 of 1981 dated 6th August, 1983 whereby the Tribunal partly allowed the said petition.

2.0 The brief facts of the case are that on

the day of incident when the deceased-Nazirmiya Dosumiya along with one Hasumiya-eye witness were walking on left-hand side of the 'kuchcha' road with bundles of grass on their heads, he was dashed from behind by a jeep-car driven by present opponent No.4 and owned by present opponent No.5. On account of the said accident, the deceased received serious bodily injuries and expired. Therefore, present opponent Nos. 1 to 3 being heirs and legal representatives of the deceased filed a petition, claiming an amount of Rs.25,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard. It was the case of the opponent Nos. 1 to 3 before the Tribunal that on the day of incident when the deceased was walking on the left hand side of the 'kuchcha' road, he was dashed from behind by a jeep driven in a rash and

negligent manner by opponent No.4, near canal. The story put forward by the opponent Nos. 1 to 3 is supported by the affidavit(Exh.28) of one eyewitness-Hasumiya. On perusal of the documents produced on record it transpires that the width of the tar road at the place of incident is about 13' feet with 3' feet 'kuchcha' road on both the sides. From the documents it further transpires that the width of the jeep is about 5.50' feet and it was the single vehicle on the road at the time of accident, and hence, it can be said that the road was unobstructed. Therefore, the fact that the jeep car dashed the deceased from behind who was walking on the correct side of the road, clearly leads to the conclusion that the opponent No.4 was driving the jeep in a rash and negligent manner. It may be noted that opponent No.4 had not filed any affidavit before the Tribunal in his defence. The Tribunal, therefore, is justified in holding that the deceased lost his life on account of the sole negligence on the part of opponent No.4, and hence, opponent Nos. 1

to 3 are entitled to claim compensation.

3.1 Learned Advocate for the appellant has raised a contention that the Tribunal ought to have exonerated the appellant from liability to pay compensation since the vehicle in question was used for hire or reward, though, it was registered as a private vehicle. Here, it is required to be noted that in the case on hand the deceased was a pedestrian and was not traveling in the offending vehicle as an illegal passenger. Hence, the defence put forward by the appellant that since the risk of the passenger is not covered when a lift is given to a passenger in goods or public vehicle, not meant to carry passengers for hire or reward, the Tribunal ought to have exonerated the appellant from liability to pay compensation, requires to be rejected.

3.2 While considering the aspect of compensation, the Tribunal has taken into consideration the medical and other evidence

available on record. Looking to age of the deceased, the nature of injuries sustained by him and considering the fact that he was earning Rs.300/- per month, the compensation awarded by the Tribunal, in my opinion, is just and reasonable. No case has been made out by the appellants for enhancement of the amount of compensation. I am, therefore, in complete agreement with the reasonings given and the findings arrived at by the Tribunal and, hence, do not find any reason to interfere in this appeal.

4.0 In the result, the appeal is dismissed. No order as to costs.

(K. S. Jhaveri, J.)

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